

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481-rdd

In the Matter of:

DELPHI CORPORATION, et al.,

### Debtors.

U.S. Bankruptcy Court

## One Bowling Green

New York, New York

August 20, 2009

10:20 AM

## B E F O R E :

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

1 OMNIBUS HEARING

2

3 HEARING re "Notice Of PBR Knoxville Sale Motion" - Notice of  
4 Motion Under 11 U.S.C. Section 363 and Fed. R. Bankr. P. 2002  
5 and 6004 for Order Authorizing and Approving Entry by Delphi  
6 Automotive Systems Tennessee, Inc. into Letter Agreement with  
7 Robert Bosch LLC for Sale of Interest in PBR Knoxville LLC  
8 (Docket No. 18716)

9

10 HEARING re "Shinwa Settlement Motion" - Expedited Motion Under  
11 11 U.S.C. Section 363 and Fed. R. Bankr. P. 9019 for Approval  
12 of Debtors' Compromise and Settlement with Shinwa International  
13 Holdings, LTD. f/k/a Shinwa Co., LTD., and Samtech Corporation  
14 (Docket No. 18770)

15

16 HEARING re Motion of Plymouth Rubber Company, LLC for Order  
17 Deeming Administrative Claim Of Plymouth Rubber Company, LLC  
18 Timely Filed and Related Relief (Docket No. 18714)

19

20 HEARING re "Motion for Authority to Apply Claims Objection  
21 Procedures to Administrative Expense Claims" - Motion for Order  
22 Pursuant to 11 U.S.C. Sections 105(a) and 503(b) for Order  
23 Authorizing Debtors to Apply Claims Objections Procedures to  
24 Administrative Expense Claims (Docket No. 18715)

25

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

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3 HEARING re Order signed on 12/6/2006 (with Exhibits)

4 establishing (1) dates for hearings regarding objections to  
5 claims and (II) certain notices and procedures governing  
6 objections to claims (related document(s) [5453]).

7

8 HEARING re Notice of Hearing Proposed Forty-Sixth Omnibus  
9 Hearing Agenda filed by John Wm. Butler Jr. on behalf of Delphi  
10 Corporation.

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Transcribed By: Clara Rubin

VERITEXT REPORTING COMPANY

212-267-6868

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P R O C E E D I N G S

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THE COURT: Please be seated. Okay, In re Delphi  
3 Corporation.

4

MR. BUTLER: Your Honor, good morning. Jack Butler  
5 and Kayalyn Marafioti here for the debtors in connection with  
6 the forty-sixth omnibus hearing. We filed an agenda, which  
7 we'd use today.

8

THE COURT: Okay. That's fine.

9

MR. BUTLER: Your Honor, I'd like to deal with matters  
10 1 and 2 together. In fact, the -- and I'll address 3 and 4,  
11 all which deal with administrative claims, but let me just deal  
12 with 1 and 2 to start with. 1 is the Sweetons' administrative  
13 claim motion at docket number 16381, and number 2 is the CSX  
14 Transportation Inc. administrative claim at docket number  
15 16548.

16

Your Honor, assuming that Your Honor, during this  
17 hearing, approves the administrative claims procedures, our  
18 intention would be to treat both of these claims, these  
19 motions, in connection with the claims that both these parties  
20 have filed, under the administrative claims procedures. And so  
21 we would move them to the September 24th claims hearing docket  
22 and treat them under the procedures.

23

There was the question with the Sweetons as to what  
24 would be dealt with -- done in connection with their lease. We  
25 had advised you at earlier occasions that the debtors were

1 considering filing a motion to reject the lease deemed to an  
2 earlier date. The debtors concluded not to do that. They were  
3 scheduled in connection with the plan, and their lease will be  
4 deemed rejected as of the effective date of the plan.

5 THE COURT: Okay.

6 MR. BUTLER: So the only issue that will be before the  
7 Court will be what portion of their -- actually, there are two  
8 issues; there's a pre-petition claim, but more importantly what  
9 portion of their claim would be deemed an administrative claim.  
10 And so as to both that matter and as to the CSX matter, we'd be  
11 treating them under the claims procedures and setting them for  
12 the September 24th claims docket.

13 THE COURT: Okay. Do they understand that?

14 MR. BUTLER: CSX has consented to it, and we're going  
15 to be advising -- depending on the outcome of this hearing,  
16 we're going to be advising the Sweetons of that. We have  
17 advised them that -- how they'd be scheduled in connection with  
18 their lease so that all --

19 THE COURT: And also that it would be adjourned to the  
20 24th?

21 MR. BUTLER: Yes.

22 THE COURT: Okay.

23 MR. BUTLER: And then in terms of further  
24 adjournments, Your Honor, we would just deal with it as we deal  
25 with it under the claims procedures.

1 THE COURT: Right.

2 MR. BUTLER: With respect to matters 3 and 4, matter 3  
3 is a motion of Furukawa Electric Company for leave to file an  
4 administrative expense claim, at docket number 18706. And  
5 matter number 4 is a motion by the AT&T entities compelling  
6 payment of administrative expenses or seeking to modify the  
7 automatic stay to permit termination of what they claim to be  
8 executory contracts, at docket number 18737. Both of these  
9 matters, because they involve items other than just an  
10 administrative claim, per se, are being adjourned to the  
11 September 24th omnibus hearing while we work out -- try to work  
12 out the issues with the parties.

13 THE COURT: Okay. What is involved in them besides --  
14 oh, one is to file a claim late --

15 MR. BUTLER: And the other is to terminate to lift the  
16 stay.

17 THE COURT: Okay. All right.

18 MR. BUTLER: So we thought, because they invited some  
19 other subject matters, we'd keep them on the omni docket --

20 THE COURT: Okay. Very well.

21 MR. BUTLER: -- till those things were sorted out.

22 THE COURT: Okay.

23 MR. BUTLER: Your Honor, that takes us to item number  
24 5 on the agenda, which is the PBR Knoxville sale motion at  
25 docket number 18716. This motion seeks authority, Your Honor,

1 for Delphi Automotive Systems Tennessee, Inc., one of the  
2 forty-two debtors in these cases, to complete a transaction  
3 pursuant to a letter agreement dated July 30th, 2009 with  
4 Robert Bosch LLC for the sale of the debtors' entire forty-nine  
5 percent membership interest in PBR Knoxville LLC, an existing  
6 joint venture between the debtors and PBR Tennessee Inc.

7 There are no objections here. My understanding is  
8 counsel for Robert Bosch, Gordon Toering of Warner Norcross &  
9 Judd, Grand Rapids, is on the phone for this. The sale price  
10 here is 1.75 million. Normally, Your Honor, this would not  
11 come before the Court before you have a pretty standard de  
12 minimis assets sale order that would allow us to deal with  
13 these matters under ten million, pursuant to the terms of that  
14 order. The reason that this has been brought up here is more a  
15 matter of caution and disclosure because of the affiliation  
16 between PBR Tennessee and Robert Bosch LLC. There was a  
17 question raised as to whether or not they were an affiliate and  
18 whether, because they're an affiliate, broadly defined, whether  
19 that -- which would be excluded from the de minimis assets  
20 sales procedures, whether or not -- and therefore might be  
21 deemed to be an insider under some circumstances. And neither  
22 the debtors nor Bosch conceded that point. We thought it was  
23 appropriate to bring this matter before the Court.

24 I don't think there's any other magic about this  
25 motion beyond that --

1 THE COURT: Okay.

2 MR. BUTLER: -- of disclosure and caution.

3 THE COURT: Have the debtors received any other bids  
4 or proposals for this --

5 MR. BUTLER: No.

6 THE COURT: -- for this interest?

7 MR. BUTLER: No, Your Honor, we have not.

8 THE COURT: Okay.

9 All right, does anyone have anything to say on this  
10 motion?

11 All right, I'll approve the motion, which is  
12 unopposed. The interest is not part of the debtors' business  
13 plan and there are clearly good business reasons for selling  
14 the asset, given the credit bid. I'm not sure whether there  
15 are any secured claims against this interest, but in any event,  
16 there have been no objections, so it could be sold free and  
17 clear under 363(m).

18 MR. BUTLER: Thank you, Judge.

19 THE COURT: I mean the credit bid --

20 MR. BUTLER: Right.

21 THE COURT: -- by the DIP lenders.

22 MR. BUTLER: Right. I think, Your Honor, as a  
23 technical matter, that the liens will remain outstanding until  
24 the effective date of the plan, but there is no objection  
25 here --

1 THE COURT: Right.

2 MR. BUTLER: -- to this transaction.

3 THE COURT: Okay.

4 MR. BUTLER: Matter number 6, Your Honor, is the  
5 Shinwa settlement motion at docket number 18770. We're asking  
6 Your Honor to approve the compromise and settlement with Shinwa  
7 International Holdings, Ltd., which is formerly known as  
8 Samtech Corporation, relating to a pending lawsuit filed by the  
9 debtors against Shinwa. The creditors' committee consented to  
10 this being dealt with on ten days' notice. There are no  
11 objections.

12 To sort of make a long story short with respect to  
13 this motion, Your Honor, we have the terms of the settlement;  
14 there are four principal terms. We would reactivate Shinwa on  
15 the debtors' global supplier list as an eligible supplier for a  
16 reward of business by the debtors within fourteen days after  
17 the settlement was executed. Shinwa will pay the debtors  
18 300,000 dollars. Shinwa will release and waive any pre-  
19 petition claims against the debtors, and there'll be mutual  
20 releases.

21 Your Honor, the business justification for this and  
22 rationale under 9019 goes to a cost-benefit analysis of the  
23 litigation. There have been challenges in connection with the  
24 discovery. There's been a tremendous amount of money spent on  
25 this claim. And there is a fact that we think would have -- an

1 additional fact that would, I think, be implicated in the  
2 litigation in that one of the principal OEMs that received the  
3 CD players was General Motors, and General Motors waived a  
4 substantial portion of their warranty claims in connection with  
5 all the settlements that we had --

6 THE COURT: So that would --

7 MR. BUTLER: -- or dealt with.

8 THE COURT: -- that would greatly reduce the fifteen  
9 million in claims damages.

10 MR. BUTLER: Arguably, Your Honor, it would. I mean,  
11 you know, you'd get in -- I think you'd get into an argument  
12 about fungibility at the time, but that's what 9019 is designed  
13 for us to assess.

14 THE COURT: Right.

15 MR. BUTLER: And, ultimately, the judgment reached was  
16 this -- the settlements before Your Honor seem to be an  
17 appropriate disposition of this litigation under these  
18 circumstances.

19 THE COURT: Okay.

20 Does anyone have anything to say on this motion?

21 All right, for the reasons stated in the motion, I'll  
22 approve it as clearly a fair and reasonable settlement.

23 MR. BUTLER: Your Honor, matter number 7 on the agenda  
24 is the motion of Plymouth Rubber Company, LLC seeking to have  
25 an administrative claim that was filed fifteen days after the

1 bar date to be deemed timely filed, at docket number 18714.

2 And counsel's here to present the motion.

3 THE COURT: Okay.

4 MR. VINCEQUERRA: Good morning, Your Honor. James  
5 Vincequerra, Duane Morris, for Plymouth Rubber Company, LLC.

6 I'll explain in a minute why I'm emphasizing the LLC. With me  
7 today is Kara Zaleskas from my -- Duane Morris' Boston office.

8 As a matter of housekeeping, Your Honor, Ms. Zaleskas  
9 filed a pro hac vice motion approximately two weeks ago. I  
10 don't believe I saw the order on the docket yet. I would just  
11 ask, to the extent she is required to appear here --

12 THE COURT: That's fine. That's granted.

13 MR. VINCEQUERRA: Thank you very much, Your Honor. A  
14 number of -- a lot of trees were killed in the filings in  
15 connection with this matter. We raise no less than five issues  
16 as to why -- or reasons why our claim should be deemed timely  
17 or should otherwise be -- or the new admin claims bar date  
18 should not be deemed to apply to our claim.

19 I'm really going to focus here on two of the issues:  
20 the improper notice issue first and then, to the extent that  
21 Your Honor finds that the new bar date does apply to the claims  
22 of Plymouth Rubber Company, LLC, the excusable -- the  
23 components of excusable neglect.

24 I'll leave the balance of the arguments in our papers  
25 with regard to the technicalities of the amended admin bar

1 date, or the new admin bar date, the efficacy of that  
2 admitted -- or modification order and the informal notice to  
3 our papers. I think they're argued fairly clearly there.

4 THE COURT: The informal proof-of-claim argument?

5 MR. VINCEQUERRA: Yes, that's right.

6 THE COURT: Okay.

7 MR. VINCEQUERRA: I apologize. I'll leave those to my  
8 papers and reserve any statements on those for rebuttal to the  
9 extent we deem it's necessary.

10 As an initial matter, do you have any questions about  
11 the papers, Your Honor? I'd be happy to answer them.

12 THE COURT: Well, I've reviewed them, so -- I guess  
13 the issue on whether it's Inc. or LLC, to my mind, is -- it  
14 seems to me it's a non-issue because it was actually received  
15 by the claimant, right? It was received?

16 MR. VINCEQUERRA: It was received the day after the  
17 bar date.

18 THE COURT: Well, no, I mean it was received by the  
19 individual who forwarded it on.

20 MR. VINCEQUERRA: Well, really, the -- I mean, the  
21 point we're getting to is proper notice, I would imagine. And  
22 a couple of points. The debtor to points to 2002(g) and  
23 service on LLC first through the law firm Burns and Levinson  
24 and then at the former address of the Plymouth Rubber, Inc.  
25 entity. A couple of points here, Your Honor. Service was made

1 pursuant to outdated -- you know, an outdated claims --  
2 outdated exhibit-and-schedules lists and based on a claim that  
3 was filed by a different entity. Service was effected on  
4 counsel for a different entity. Burns and Levinson LLC, which  
5 makes up a bulk of the notice argument, never represented the  
6 LLC entity. I mean, and it's important to understand --

7 THE COURT: Was there any -- is there anything in the  
8 record about notice of Plymouth Rubber Company Inc.'s Chapter  
9 11 case and reorganization by --

10 MR. VINCEQUERRA: Delphi actively participated in that  
11 case, Your Honor.

12 THE COURT: How do I know that?

13 MR. VINCEQUERRA: Excuse me?

14 THE COURT: How do I know that? Or will they  
15 acknowledge that?

16 MR. VINCEQUERRA: Well, I can't imagine they won't  
17 acknowledge it, Your Honor, as they filed stipulations in that  
18 case as well as, I believe, a claim.

19 THE COURT: When did the plan confirm?

20 MR. VINCEQUERRA: Plymouth Rubber Inc. confirmed its  
21 plan and emerged from bankruptcy on August 31st, 2006. And  
22 maybe I should back up a little bit, Your Honor, and give you a  
23 little bit of a time line here because that may be helpful.

24 THE COURT: I mean, I know they sued LLC.

25 MR. VINCEQUERRA: That -- you know, that's the rub

1 here, Your Honor. They served the objection -- the notice of  
2 the new bar date on Inc. at seven different locations, or five  
3 different locations, wherever it -- however many it was, served  
4 counsel for Inc. Burns and Levinson has never represented the  
5 reorganized debtor, and -- but they got it right when they  
6 wanted to sue the new entity under the new purchase order.

7 THE COURT: But, again, Mr. Collins forwarded this  
8 notice on to LLC, right?

9 MR. VINCEQUERRA: Well, you're right, Your Honor,  
10 they --

11 THE COURT: And he was acting as LLC's agent, wasn't  
12 he?

13 MR. VINCEQUERRA: Right, as part of the wind-down  
14 staff. And if --

15 THE COURT: Okay.

16 MR. VINCEQUERRA: -- if Your Honor is -- you know,  
17 wants it moved forward to the excusable neglect argument, which  
18 I think is also a very good argument, I don't think the notice  
19 was proper there. I think, you know -- at footnote 3 of their  
20 objection is very telling. They note that for the purposes of  
21 their objection they presume that LLC is the successor-in-  
22 interest to Inc. I'm not aware of any case law that says you  
23 can get the benefit of that assumption for notice requirements  
24 under an --

25 THE COURT: But, again --

1 MR. VINCEQUERRA: -- under an admin --

2 THE COURT: -- Mr. Collins made the same presumption,  
3 right? He sent the notice on to LLC?

4 MR. VINCEQUERRA: He did send it on, there's -- we do  
5 not contest that fact.

6 THE COURT: Okay.

7 MR. VINCEQUERRA: So if you have no other questions  
8 for me on the proper notice -- we don't contest the fact that  
9 Mr. Collins did receive actual notice -- I can move on to  
10 excusable neglect.

11 THE COURT: Okay.

12 MR. VINCEQUERRA: Debtors don't contest two components  
13 of excusable neglect: They don't contest that the -- regarding  
14 the length of delay or Plymouth Rubber's good faith. So,  
15 really all that we're left with, Your Honor, is the prejudice  
16 requirement and the reason for delay.

17 Mr. Butler indicated that a proof of claim was filed  
18 fifteen or sixteen days after the bar date. That's technically  
19 true. We alerted -- well, we alerted counsel for the debtor  
20 the day after the bar date, asking them to deem the claim  
21 timely filed; that's reflected in Ms. Zaleskas' affidavit.

22 But to get to the point of excusable neglect, Your  
23 Honor, what happened here is really a perfect storm for my  
24 client. The prior entity, the Inc. entity, will have business  
25 relationships with Delphi as a result of the Delphi bankruptcy

1 and things that happened which, to be quite honest with you, my  
2 firm was not involved with. They went into bankruptcy and  
3 reorganized. When they emerged from bankruptcy, they had new  
4 equity, substantially new officers and directors, effectively a  
5 new entity; entered into a new purchase order agreement with  
6 Delphi on January 30th, 2008. About nine months after that,  
7 that's approximately a year and a half after, they emerged from  
8 bankrupt -- the reorganized debtor emerged from bankruptcy.

9                   Approximately nine months after entry into that  
10 purchase order, Delphi sued Plymouth Rubber Company, LLC in  
11 Michigan for breach of the contract, for breach of the purchase  
12 order agreement. Plymouth Rubber Company, LLC counterclaimed,  
13 and that's the basis of our -- those are the bases of our --  
14 that's the basis of our admin claims.

15                   Six days after Delphi sued Yongel (ph.) -- the Yongel  
16 Company, another -- a supplier of Plymouth Rubber Company also  
17 sued Plymouth Rubber Company, LLC. And in that case as well,  
18 Plymouth Rubber Company filed counterclaims both against Yongel  
19 and Delphi.

20                   Both those cases were consolidated for mediation  
21 purposes and they're in global mediation. The -- as a result  
22 of the lawsuits from their principal buyer and their principal  
23 supplier, Plymouth Rubber Company, LLC started its own line  
24 down in October of 2008 and approximately three months after  
25 that laid off all of its employees. And that's where we have,

1 you know, the sole employee of the debtor, Mr. Collins.

2 So, you know, it's important to remember -- oh, let me  
3 jump -- I'm sorry, excuse me, Your Honor, let me jump to the  
4 portions of excusable neglect that are in dispute: reason for  
5 delay. We laid out some of these facts because, I mean,  
6 clearly there is a legitimate reason for Plymouth Rubber  
7 Company, LLC's one-day delay in providing notice to the debtors  
8 with regard to their admin claim.

9 THE COURT: I guess my one issue with that is why  
10 didn't Mr. Collins open the envelopes?

11 MR. VINCEQUERRA: Why did he open the envelopes?

12 THE COURT: Why didn't he?

13 MR. VINCEQUERRA: Why didn't he?

14 THE COURT: Right. I mean, he got them on the 9th.  
15 He put them -- it doesn't say this, but I guess one can infer  
16 that he didn't open them, he put them in another envelope and  
17 mailed them to Mr. -- it begins with an S, let me get the right  
18 name -- Mr. Schultz.

19 MR. VINCEQUERRA: Yes, that's right. His name is --

20 THE COURT: I don't understand why he didn't open the  
21 envelopes, because they weren't received by Mr. Schultz until  
22 six days later. I mean, particularly if he'd been waiting --  
23 if they'd been -- you know, if he only checks the P.O. box  
24 every two weeks, I don't understand why he wouldn't have opened  
25 the envelopes.

1                   MR. VINCEQUERRA: Well, I mean, it's not in his  
2 papers, Your Honor, and anything I say would be pure, you know,  
3 suspicion and guesswork. But the fact of the matter is that  
4 the notices were not addressed to the entity that employed him.  
5 They were addressed to an Inc. -- the Inc. entity. So, LLC  
6 never filed a notice of appearance in this case, has never  
7 appeared in this case until this dispute, and they never felt  
8 that they had a need to appear in this case because they were  
9 party to a post-petition contract that, under the prior plan,  
10 gave them an allowed amended claim.

11                   So, I mean, while it's pure, you know, circumspection  
12 as to why he did not open the letter for a day and put it in  
13 regular mail, the letter wasn't addressed to the entity that  
14 employed him and the entity that's in wind-down.

15                   THE COURT: Well, it didn't employ Mr. Schultz either,  
16 did it?

17                   MR. VINCEQUERRA: No, it did not. So, Your Honor, to  
18 continue on with reason for the delays, you know, there was an  
19 aggressive timetable here for the bar date, from the height of  
20 the holiday season. We're in -- Plymouth Rubber Company, LLC  
21 is in its own wind-down, is on a short staff, and I think that  
22 there's ample justification here for the reason of delay -- for  
23 the reason for delay.

24                   To move to the other component that's in contest, as  
25 to prejudice, I don't see, you know, any realistic manner of

1 prejudice here for the debtors. They learned of the claim one  
2 day after the bar date. There's no contest that Ms. -- there's  
3 no question that Ms. Zaleskas -- I mean, it's not contested  
4 Ms. Zaleskas alerted the debtors to the claim the day after the  
5 bar date. The claim was filed a week and a half to two weeks  
6 later, followed shortly by this motion. The claim is an  
7 unliquidated amount, is in the nature of a counterclaim, you  
8 know, brought as a response to suits against Plymouth Rubber  
9 Company, LLC.

10 My understanding from my reading of the plan and  
11 disclosure statement in this case and some things in the news  
12 is admin claims are anticipated to be paid in full, and there  
13 are literally hundreds of millions of dollars of admin claims.

14 So I see very little chance for prejudice there. The  
15 debtors make the argument that -- you know, the classic  
16 floodgates argument that you commonly see in pioneer type of  
17 cases. The facts of this case are so unique I really don't see  
18 that as a reasonable prospect. Two creditors of the debtors  
19 with substantially similar names but different entities, you  
20 know, the claimant being in wind-down, I just don't see the  
21 floodgates opening here.

22 So with that, Your Honor, if you have no questions,  
23 I'll turn it over to, I guess -- is it Mr. Powlen?

24 MR. POWLEN: Yeah.

25 THE COURT: Is it -- was it a compulsory counterclaim?

1 Does it arise under the same transaction or occurrence?

2 MR. VINCEQUERRA: Rises under the same purchase order  
3 agreement.

4 THE COURT: Okay.

5 MR. VINCEQUERRA: Thank you very much, Your Honor.

6 MR. BUTLER: Judge, just one moment, if you don't  
7 mind.

8 (Pause)

9 MR. BUTLER: Your Honor, I just want to make sure the  
10 record is clear here. I have, and I think counsel will  
11 acknowledge that we obtained, and I have for the Court, a  
12 certification of conversion from a corporation to a limited  
13 liability company of Plymouth Rubber Company, Inc., a  
14 Massachusetts corporation. It's -- it is the same company. I  
15 mean, we hear that it's different companies and not successors.  
16 I actually have the documentation from the State of Delaware  
17 Secretary of State's Office that we obtained that shows that on  
18 September 1st, 2006 the same legal entity was converted from  
19 one kind of corporation in Delaware to another kind of  
20 corporation in Delaware.

21 So, I mean, I think the suggestion that these are  
22 fundamentally different entities just is not accurate. And  
23 I've got the evidence here. I don't think that counsel,  
24 Mr. Vinceguerra, would dispute the Secretary of State of  
25 Delaware as to what the entity is, and I have that.

1                   So this is the same legal entity that was converted on  
2 the -- on September 1st.

3                   Second, Your Honor, Mr. Vincequerra, in his argument,  
4 made a major point about the fact that there was a new purchase  
5 order in January of 2008. And, in fact, there was a purchase  
6 order that was reissued on -- in January of 2008 after the 2006  
7 reorganization to Plymouth Rubber, and it was purchase order  
8 number P6850008, and it was issued to the address 500 Turnpike  
9 Street in Canton, Massachusetts. That was the business address  
10 that the parties New Plymouth, Plymouth LLC, whatever one wants  
11 to call it, that is the address that Plymouth used with Delphi  
12 in connection with the new purchase order that Mr. Vincequerra  
13 referred to, and the PO was issued to that address. And the  
14 notice of administrative claims bar date was -- one of the  
15 places that it went to was to that address in Canton.

16                   And so I think that the -- you know, the argument that  
17 the notice, in addition to being actually received, it also was  
18 the business address that Delphi and Plymouth Rubber Company,  
19 LLC used between themselves in the January 2008 purchase order  
20 and was the appropriate business address.

21                   I don't think, Your Honor, that this matter should  
22 turn in any respect on the issue of notice. Appropriate notice  
23 was given; it was given in connection with -- to the  
24 appropriate -- you know, the legal entity, which really was the  
25 same entity converted, to the business address that was used in

1 the 2008 contract between the companies. And the notice was  
2 actually, in fact, received.

3 I think the question is more the excusable neglect  
4 question here, and I only have a few comments on that. First,  
5 we acknowledged in our papers that we did receive a call from  
6 counsel the day after the bar date. That isn't unusual. We  
7 receive those kinds of calls fairly regularly when there are  
8 bar date issues, and our response is always the same, which is  
9 it's not our bar date to change, it's the Court's bar date, and  
10 that we don't have any ability to change the date and people  
11 need to take whatever steps they need to take to protect their  
12 clients. And the same kind of -- the same discussion was had  
13 with counsel for Plymouth Rubber.

14 The fact that they waited a couple of weeks -- and it  
15 wasn't just a week, it was the fact they waited until after the  
16 plan modification hearing to submit the proof of claim two  
17 weeks later, is -- you know, kind of mystifies me as to why  
18 they chose to do that. But that's not excusable neglect. They  
19 could have filed something the next day. According to  
20 Mr. Vincequerra's argument, it would have been -- you know, all  
21 they needed to do was to file an administrative claim that  
22 attached the lawsuit and that that would have done that.

23 I think when you look at the -- from the company's  
24 perspective, the issue here is -- Your Honor, I think, knows  
25 from the plan modification hearing and all of the pleadings

1 filed in connection with that, Delphi was on a mission over the  
2 last fifteen, sixteen months since the prior plan, before it  
3 was modified, hadn't gone effective, to try and develop a  
4 solution for these cases that would be successful, that would  
5 involve modifying the plan, emerging pursuant to a plan and  
6 providing for the payment of administrative expenses that are  
7 allowed. And that took an enormous amount of effort and  
8 negotiation to do that. And one of the things, the processes  
9 we went through in the latter part of July, was to assess all  
10 of the claims that were made in connection with the bar date  
11 and to evaluate those with our chief restructuring officer and  
12 with the representatives of our other major stakeholders,  
13 particularly with the -- some of the advisors of the DIP  
14 lenders in connection with their credit bid so that we were all  
15 comfortable in proceeding on the 29th here. And that was based  
16 on having an assessment of what the world of administrative  
17 claims was through July -- or through May 31st, understanding,  
18 as Your Honor knows, under the modified plan that's now been  
19 approved, the -- there's another window bar date that's going  
20 to go out covering June 1st through the anticipated effective  
21 date of September 30th.

22 But making the assessment of what the unpaid  
23 administrative claims were from the -- from October 5, 2005  
24 through May 31, 2008 was a real exercise in connection with  
25 preparing for the plan modification hearing. And the fact that

1       counsel or their client chose not to file the claim for a  
2       couple of weeks after they had actual notice and they had had  
3       actual conversations with us I don't think fits within the  
4       factors of excusable neglect.

5                   That's all, Your Honor, the debtors would have to say  
6       on this.

7                   THE COURT: Well, let me explore that a little bit  
8       more. Is there or was there an estimate of allowed  
9       administrative claims that was a factor in the DIP lenders and  
10      GM going forward on the 29th to propose the winning plan  
11      support agreement and lead to the modified confirmation --

12                  MR. BUTLER: Yes, Your Honor. You --

13                  THE COURT: -- of the plan? Because, I mean, I don't  
14       remember any testimony --

15                  MR. BUTLER: No.

16                  THE COURT: -- on, you know, some floor that -- or  
17       some ceiling for administrative claims or anything.

18                  MR. BUTLER: No, there's not, Your Honor. There was  
19       not. What Your Honor may recall was that one of the charts  
20       that we put up and went through explained how the  
21       administrative liabilities were going to be allocated among the  
22       parties.

23                  THE COURT: Right.

24                  MR. BUTLER: It was intentional that -- and one of the  
25       things we fought for in the MDA was not to have dollar cap

1 limitations. There were, in fact -- that was a subject of  
2 protracted negotiation, actually, as to whether or not there  
3 would be limitations and what those liabilities would be and,  
4 instead, the agreement was to do it by category. And Your  
5 Honor saw those categories allocated between the GM entity, the  
6 DIPCo entity and DPH Holdings, the reorganized entity.

7 THE COURT: Right.

8 MR. BUTLER: And there was also a focus, and Your  
9 Honor may recall that Mr. Stipp, in his sworn testimony,  
10 provided in his declaration a fair amount of discussion about  
11 the assessment of administrative claims as it related to DPH  
12 Holdings' ability to be able to deal with its -- or what it  
13 needed to satisfy as it moved forward. And so there was an  
14 assessment that went on, there was -- Mr. Stipp did make those  
15 evaluations and make those assessment, and there was that, if  
16 you will, sort of informal feasibility discussion among the  
17 parties. Ultimately, that didn't arise to the level, Your  
18 Honor, of having -- beyond the sworn testimony, there wasn't  
19 any controversy at the plan modification hearing about it  
20 because ultimately it had been negotiated out.

21 THE COURT: So which of the three entities would be  
22 responsible for any affirmative recovery here?

23 MR. BUTLER: Without prejudicing the estate, because I  
24 may get this wrong, but my sense is that this is a retained  
25 liability of DPH Holdings. I don't know that this -- and the

1 reason I say that is because this supplier no longer does  
2 business with the company. This is a -- but I'd have to check  
3 that in terms of -- go back and check that under the plan in  
4 the negotiations. But this is a supplier -- this is a former  
5 supplier who, from the company's perspective, failed to live up  
6 to its obligations under the purchase order, and it required  
7 Delphi to incur a very substantial expense in re-sourcing from  
8 the supplier who failed to live up to the terms of their  
9 contract in the company. And that's only why we sued them, and  
10 we re-sourced the product.

11 So I think the re-sourced product and the  
12 administrative liabilities associated with them go to, in fact,  
13 DIPCo, but I think that the exposure under this litigation is  
14 likely a DPH Holding obligation. But I'd have to confirm that,  
15 Judge. That's my best recollection.

16 THE COURT: Okay. Well --

17 MR. BUTLER: And as you know, DPH Holdings --

18 THE COURT: It wouldn't be -- I guess it wouldn't be a  
19 GM one because this isn't a GM plant --

20 MR. BUTLER: No, it's not -- no, no, it's -- and  
21 that's what I'm saying to you. My -- and I think Ms. Kraft  
22 (ph.) is here from the company and we just told her about  
23 this -- my belief is the retained liability for the litigation  
24 exposure would be DPH Holdings. And the supplier contract for  
25 what was the re-sourced contract, which is with another entity,

1 that obligation and the administrative claims associated with  
2 it, that went to DIP Holdco, or will go to DIP Holdco.

3 THE COURT: Okay.

4 MR. BUTLER: I think that's the proper -- at least  
5 that was the philosophy behind the negotiation at the time.

6 THE COURT: All right. And it looks like to me the  
7 counterclaim -- you can correct if I'm wrong -- the  
8 counterclaim just seeks monetary damages, right? It doesn't  
9 seek specific performance or anything like that?

10 MR. BUTLER: That's correct.

11 THE COURT: It's an unliquidated claim. Have there  
12 been any discussion as to what the damages are asserted to be  
13 as far as the counterclaim? Either one of you --

14 MR. BUTLER: There was, Your Honor -- I'm advised, and  
15 Mr. Vincequerra may know, I was advised it was a mediation. I  
16 don't know what was --

17 THE COURT: Right.

18 MR. BUTLER: -- put on the table at the mediation.

19 THE COURT: I mean, I don't want you to reveal  
20 settlement proposals, but, just, has there been a settlement of  
21 what the damages could be?

22 MR. VINCEQUERRA: Yes, Your Honor, that's the irony of  
23 this whole thing for my client is that while this bar date  
24 procedure has been going on, my client has been across the  
25 table --

1                   THE COURT: No, I know there's been a mediation. I'm  
2 just trying to figure out what --

3                   MR. VINCEQUERRA: No, there have been -- you know, a  
4 mediation is fairly far along. There have been numbers  
5 exchanged.

6                   THE COURT: I don't want to hear settlement proposals.  
7 What I'm focusing on here is, on the issue of prejudice, you  
8 had made a good point that these claims are going to be paid in  
9 full under the modified plan. The point I've just been  
10 exploring with Mr. Butler is who's going to be paying them. If  
11 it is, as it would appear to me to be the case just from the  
12 nature of the claim and the MDA, the remaining holding company,  
13 the debtor wind-down company, then I did make a conclusion as  
14 part of my ruling approving the modification of the plan that  
15 that modification was feasible, and that was premised upon the  
16 testimony about the likely amount of administrative claims and  
17 the funding of the successor entity and the like.

18                   So the reason I'm asking this question is to find out  
19 how large your claim is. It wasn't taken into account in that  
20 testimony, and it was a large claim that may affect the  
21 prejudice calculation. I just don't know. I mean, it's an  
22 unliquidated claim. I don't know whether it's large or not but  
23 whether it's, you know, something that, for example, pales in  
24 comparison to the debtors' claim.

25                   So I'm not asking you about settlement discussions;

1 I'm asking what's been asserted, unless you want to tell me  
2 what you think the realistic number is. But that's up to you.

3 MR. VINCEQUERRA: It's difficult to say, Your Honor,  
4 because, to be quite honest with you, I haven't been involved  
5 in the mediation. I understand from our mediation statement  
6 that that counterclaim number that we've been stuck at is  
7 roughly twenty million dollars. Again, that's as a  
8 counterclaim that would be, obviously, offset against any  
9 successful recovery that they have against us.

10 THE COURT: Although it would seem to be it's  
11 either/or, right? Unless you settle it, either they breached  
12 or you breached. So I'm not sure there'd be much of an offset.

13 Okay. All right.

14 MR. BUTLER: Your Honor, that's all the debtors  
15 have --

16 THE COURT: Well --

17 MR. BUTLER: -- unless you had a question.

18 THE COURT: -- let me ask you, though, based upon a  
19 twenty million dollar claim, how does that affect the -- was  
20 any liability for this taken into account in the declarations  
21 in support of the modification of the plan?

22 MR. BUTLER: My understanding is the answer to that  
23 question is no, there was no money allocated to this amount  
24 through the -- whether the claims process was evaluated.

25 The -- and, you know, Your Honor, there has been a

1 wide variety of lawsuits started, stopped in hiatus, since  
2 October of 2005. And the debtors relied on the administrative  
3 claims process here that went out to everybody as -- to catch  
4 the claims that people were going to assert as part of the --  
5 to understand as part of the plan modification process.

6 THE COURT: And, again, this claim came in after the  
7 plan modification hearing.

8 MR. BUTLER: Correct. It came in on the June 30 -- on  
9 July 30th --

10 THE COURT: The hearing was on the 29th.

11 MR. BUTLER: -- and where the hearing was July 29th.  
12 And the assessment was actually made in the days -- we spent  
13 three or four days leading up to the July 29th hearing going  
14 over this evaluation and assessment.

15 THE COURT: Okay.

16 MR. BUTLER: And I think -- you know, I don't have  
17 Mr. Stipp here, Your Honor, but Ms. Kraft is here and she works  
18 closely with Mr. Stipp. I think that Mr. Stipp would tell you  
19 that if he had an extra twenty million dollar -- if in fact,  
20 taking their -- I think we disagree vigorously with the claim,  
21 but if you add another twenty million dollars of litigation  
22 exposure to the pot, would that be material, I think Mr. Stipp  
23 would say yes, it's material.

24 THE COURT: Well, what was funding again for --

25 MR. BUTLER: Remember, the funding from -- I think it

1 was -- the entire funding from General Motors was fifty  
2 million; plus, we had the plants that were retained which we  
3 could sell off; plus, we had --

4 THE COURT: But those are more dogs and cats than --

5 MR. BUTLER: They were.

6 THE COURT: Right.

7 MR. BUTLER: Plus, we had the avoidance actions, to  
8 the extent that there's collectability on some of the avoidance  
9 actions. And there were some other -- there were some -- I  
10 think some other MRA payments, I think, from General Motors or  
11 a few other sources of revenue. But it was calibrated. It  
12 was -- you know, it was designed, as you know, to provide for  
13 an efficient disposition of all of those assets and remediation  
14 of the -- of some of the other issues and payment of the  
15 liabilities. So I think Mr. Stipp would argue that twenty  
16 million was material in that calculation.

17 THE COURT: Okay.

18 MR. BUTLER: Thanks, Judge.

19 THE COURT: Okay.

20 MR. POWLEN: Just one minor point, Your Honor.

21 Mr. Butler -- I don't know if he passed it up, because I didn't  
22 see him pass it up, but makes much of the fact that the  
23 entities -- the LLC entity and the Inc. entity are the same. I  
24 know Your Honor said actual -- there was -- you know, the  
25 notice was received, but they're the same entities. And I know

1 Mr. Butler's familiar with the concept of a fresh start and a  
2 reorganized debtor, but they're the same entities as they would  
3 be in any post-effective date debtor that has entirely new  
4 equity and has a fresh start in a bankruptcy. That this was  
5 not accomplished through a 363 sale and a transfer of assets  
6 but rather an infusion of equity and a stock deal doesn't  
7 change the fact that at the end of the day they were dealing  
8 with a newly born entity.

9 Other than that, Your Honor, I have nothing further.  
10 Thank you very much for your time.

11 THE COURT: Okay.

12 Is -- neither Mr. Collins nor Mr. Schultz is here,  
13 right?

14 MR. POWLEN: No, Your Honor.

15 THE COURT: They're not present?

16 MR. POWLEN: No, Your Honor. We had discussions with  
17 Skadden, and prior to the hearing we agreed that we would just  
18 rely on the affidavits.

19 THE COURT: Okay.

20 Okay, anyone else?

21 Okay, I have before me a motion by Plymouth Rubber  
22 Company, LLC for an order deeming its administrative expense  
23 claim timely filed or for related relief. The origin of this  
24 dispute is that, in connection with proceeding to obtain the  
25 modification and ultimate consummation of its confirmed but

1       unconsummated Chapter 11 plan, Delphi Corporation and its  
2       affiliated debtors sought approval of an administrative claims  
3       bar date for the Chapter 11 period through May of 2009. The  
4       debtors' confirmed Chapter 11 plan was not consummated because,  
5       asserting breaches, the plan investors under that plan refused  
6       to close in April of 2008. That left Delphi with a significant  
7       hole in the required funding for the confirmed plan. Delphi  
8       then spent close to a year dealing with ways to plug that hole  
9       as well as to address the further deterioration in the  
10      financial markets and in their perception of Delphi's value,  
11      which led to a substantially different approach, ultimately, to  
12      their exit from Chapter 11 under a Chapter 11 plan.

13           The debtors, in assessing their ability to emerge from  
14       Chapter 11, and having entered into an agreement with an entity  
15       called Platinum, as well as General Motors, that would have  
16       provided for that combined entity's acquisition of most of the  
17       debtors' business operations in return for sufficient cash to  
18       deal with a portion of the administrative claims against the  
19       debtors, plus stock -- I'm sorry, plus forms of contingent  
20       consideration -- having entered into that transaction, the  
21       debtors determined that they needed prompt means to calculate  
22       the outstanding administrative claims other than the debtor-in-  
23       possession financing claims against them, and, therefore,  
24       obtained from the Court, in connection with establishing  
25       procedures for consideration of the proposed modification to

1 the Chapter 11 plan involving GM and Platinum, the  
2 administrative claims bar date.

3 The bar date notice provided for, for purposes of a  
4 bar date, fairly short notice, but given the timing constraints  
5 that the debtors faced, including, in essence, a week-to-week  
6 extension of enforcement of remedies under the DIP facility and  
7 a clear and short deadline from GM and Platinum, such notice  
8 was appropriate under the circumstances.

9 The debtors sent out the notice and received timely  
10 administrative claims from approximately 2,400 claimants. The  
11 claims procedures motion that is on the calendar for later  
12 today states that approximately one billion dollars of  
13 administrative claims were asserted in those proofs of claim,  
14 plus unliquidated amounts.

15 Ultimately, the proposed modified plan was itself  
16 modified, although not materially so for purposes of the issues  
17 before me today -- and instead of Platinum acquiring  
18 significant assets under the plan, along with GM, Platinum was  
19 replaced by the debtors after an auction process by a  
20 consortium of the debtor-in-possession lenders. And that  
21 group, plus GM, entered into an MDA with the debtors, which  
22 formed the basis for the modified plan. The Court held a  
23 hearing on that modification and approved it on July 29th, two  
24 weeks after the administrative claims bar date.

25 The rough structure of the plan provides for the

1 continuation of most of the debtors' businesses, either in the  
2 hands of a GM acquisition company with respect to certain  
3 facilities that primarily manufacture parts for GM vehicles, as  
4 well as other assets that would go to the DIP lender  
5 acquisition group.

6 The third split of the debtors' assets would be  
7 retained by the debtors, since neither GM nor the DIP  
8 acquisition group wanted to acquire them. In addition, that  
9 entity that would continue to hold those assets would receive a  
10 cash payment by GM to enable that entity to pay administrative  
11 claims against it that were not being assumed in connection  
12 with the purchase of ongoing operations by the DIP acquisition  
13 vehicle and GM acquisition vehicle. And that amount of cash  
14 was determined by the debtors in consultation with various  
15 constituents, including GM, to be sufficient to have the  
16 surviving debtor entity meet its obligations under the plan,  
17 including the payment of allowed administrative claims.

18 The Court took testimony on that aspect of the  
19 proposed plan modification in the form of an affidavit by  
20 Mr. Stipp, in which he went through his analysis of likely  
21 sources and uses of cash to pay that entity's administrative  
22 claims. No one cross-examined Mr. Stipp. And based upon my  
23 review of the MDA, the modified plan and the affidavits  
24 submitted in support thereof, I concluded that the plan, as  
25 modified, was feasible: that is, that it was not likely to be

1 succeeded by a liquidation under Chapter 7 and that it could be  
2 performed, including the payment of administrative claims, as  
3 contemplated by the plan.

4 The debtors sent out notice of the administrative  
5 claims bar date as required by my order establishing the bar  
6 date, and notice was actually received by Plymouth Rubber  
7 Company, Inc. on -- it is acknowledged to have been received by  
8 Plymouth Rubber Company, Inc. on July 9, 2009. That's set  
9 forth in the affidavit in support of Plymouth's motion of  
10 Mr. Collins.

11 The debtors sent that notice to the address in their  
12 post-petition purchase order between them and Plymouth Rubber  
13 Company, LLC -- the same location. The address on the envelope  
14 was to Plymouth Rubber Company, Inc., which had been the entity  
15 with which the debtors had done business prior to Plymouth's  
16 Chapter 11 reorganization.

17 Mr. Collins, as I said, received the notice, which was  
18 also sent to numerous other locations to Plymouth Rubber  
19 Company, Inc., including to the counsel that filed the proof of  
20 claim on behalf of Inc. in the Chapter 11 case. Mr. Collins  
21 did not open the notice but, instead, on July 10th, put it, and  
22 apparently some other correspondence, in an envelope and  
23 forwarded it to Mr. Schultz, who is described in the Collins  
24 affidavit as a representative of Plymouth Rubber, LLC's parent,  
25 or at least an affiliate, retained to manage Plymouth's

1       affairs, Versa Capital Management, Inc., which also manages the  
2       funds which directly own the equity interest in Plymouth  
3       Rubber.

4                 Although mailed on July 10th, according to  
5       Mr. Collins, the notice was not received by Mr. Schultz until  
6       July 16th, at which point Mr. Schultz, unlike Mr. Collins,  
7       opened the package, read the notice and immediately contacted  
8       the debtors, seeking an extension of the bar date, which was  
9       not agreed to.

10               It's undisputed that Plymouth did not file the proof  
11       of claim and/or seek approval of an extension until July 30th,  
12       after the plan modification hearing.

13               Plymouth requests that the Court consider its  
14       administrative claim timely on a number of different grounds,  
15       although most of the focus, properly so, of this hearing, has  
16       been on the ground of excusable neglect. Before I deal with  
17       that issue and those factors, let me briefly deal with the  
18       other bases for Plymouth's requested relief.

19               First, Plymouth contends that the Court did not have  
20       power to establish the administrative claims bar date, given  
21       the treatment of the administrative claims bar date in the  
22       original plan and the confirmation order. The plan itself  
23       contemplated, in the definition of "administrative claim," the  
24       potential for establishing a different administrative claims  
25       bar date than was set forth in the plan, which was a date

1 forty-five days after the confirmation of the plan. The plan  
2 also reserved fully the debtors' rights in the event that the  
3 plan did not go effective, which clearly was the case.

4 That plan, as I noted, contemplated a very different  
5 outcome for creditors than the current modified plan. Not only  
6 was there no issue of the payment of all administrative claims,  
7 requiring no determination, as a practical matter, by the Court  
8 as to feasibility for potential failure to cover administrative  
9 claims, but also the plan provided for full payment of  
10 unsecured creditors at a deemed plan value, and a substantial  
11 return to shareholders. Consequently, the plan's  
12 administrative claims bar date provision was appropriate for  
13 that structure -- again, one where there was really no issue as  
14 to whether the debtors would be able to pay all asserted  
15 administrative claims.

16 The confirmation order similarly provided for a forty-  
17 five day post-confirmation administrative claims bar date and  
18 stated that it would govern in light of -- in the event of a  
19 conflict between the plan and the confirmation order. And  
20 clearly it was an extant order. However, the debtors' need to  
21 set an earlier bar date, given the changes to their plan, was  
22 clear and required the establishment of a different bar date,  
23 clearly, in the context of the deadlines they were facing. The  
24 Court considered such a request to be appropriate, both in  
25 light of the rights that the debtors reserved for themselves

1 under the confirmed but not consummated plan, as well as under  
2 the Court's ability to amend the confirmation order, which on  
3 this point, was quite clearly outdated.

4 Therefore, I believe that Plymouth's argument that the  
5 Court exceeded its authority in setting a new administrative  
6 claims bar date order, and that Delphi and the other parties  
7 should be governed in this respect by the terms of the  
8 confirmed plan and the confirmation order entered in 2008, is  
9 not well taken and is denied.

10 Next, Plymouth argues, as a matter of due process,  
11 that the notice to it of the administrative claims bar date was  
12 deficient. It does so on two grounds. The first is that it  
13 asserts the debtors were involved in post-petition litigation  
14 commenced by the debtors in state court in Michigan against  
15 Plymouth as well as subsequent litigation commenced by a third  
16 party in Massachusetts. The second is that the debtors knew  
17 that Plymouth was represented by counsel in that litigation,  
18 and, therefore, that in addition to the other places that the  
19 debtors provided Plymouth with notice, they should have  
20 provided notice to litigation counsel in the Michigan and  
21 Massachusetts litigation. It should be noted that those counsel  
22 did not file a notice of appearance in the Chapter 11 case and  
23 that, in fact, they have not appeared in the Chapter 11 case  
24 until this current motion.

25 The motion relies upon, primarily, on this point, In

1 re Grand Union Company, 204 B.R. 864 (Bankr. D. Del. 1997), in  
2 which the bankruptcy court concluded in that case that the  
3 debtors' direct mailing of notice to personal injury tort  
4 claimants represented by counsel was inadequate notice of the  
5 bar date, and that the notice should have been provided to the  
6 personal injury counsel that Grand Union was dealing with.  
7 That case flies in the face of a number of cases in the Second  
8 Circuit, including in the Southern District of New York, which  
9 state that notice requirements under the Bankruptcy Code,  
10 including in respect of bar dates (and notices of similar  
11 consequence), do not have to be sent to counsel representing  
12 the claimant, but may instead only be sent -- or need only,  
13 instead, be sent to the claimant itself. See, for example, In  
14 re Brunswick Baptist Church v. Brunswick Baptist Church, 2007  
15 U.S. Dist. LEXIS 3319 (N.D.N.Y. Jan. 16, 2007); In re  
16 Alexander's Inc. 176 B.R. 715 (Bankr. S.D.N.Y. 1995); In re  
17 R.H. Macy & Company Inc. 161 B.R. 355 (Bankr. S.D.N.Y. 1993);  
18 and Dependable Insurance Company v. Horton, 149 B.R. 49 (Bankr.  
19 S.D.N.Y. 1992).

20 I should note further that Judge Walsh, in the Grand  
21 Union case, made it clear that he was focusing on the unique  
22 facts before him, where he found that the claimants who  
23 received the notice were unsophisticated and that all dealings  
24 in respect of their claims had previously been through their  
25 respective counsel. Clearly, Plymouth is not an

1 unsophisticated tort claimant here.

2 Consequently, based on the rationale of the Brunswick  
3 Church case and the other cases I've cited, I do not believe  
4 that the debtors were required to give notice to counsel of  
5 record in the pending litigation, particularly as, as I noted,  
6 that counsel had not appeared in the Chapter 11 case.

7 In addition, Plymouth contends that it filed through  
8 its counterclaim in the pending non-bankruptcy litigation an  
9 informal proof of claim that should be recognized by the Court,  
10 and clearly that that proof of claim was timely in that it was  
11 well before -- the counterclaim was filed well before the  
12 expiry of the administrative claims bar date. The argument,  
13 however, again runs afoul of case law in this district and the  
14 majority of the cases, including at the circuit court level  
15 elsewhere: that is, that the document giving rise to the  
16 informal proof of claim was not filed in this Court, but  
17 rather, instead, only in the courts in Michigan and in  
18 Massachusetts.

19 I should note that the cases that deal with this issue  
20 are generally dealing with pre-petition claims. But given the  
21 practice of treating claims and disputes related to missed bar  
22 dates for administrative claims the same way as the courts  
23 treat missed bar dates for pre-petition claims, I find those  
24 claims to be analogous -- those cases, I'm sorry, to be  
25 appropriate here, and for all intents and purposes on all

1 fours. For the close analogy see -- between disputes in  
2 respect of late administrative claims and disputes in respect  
3 of late pre-petition claims, see *In re PT-1 Communications Inc.*  
4 386 B.R. 402 (Bankr. E.D.N.Y. 2007).

5 The informal proof of claim rule, as far as I can see,  
6 has always, in the Second Circuit and in the Southern District,  
7 been applied to claims that were not filed in the form of a  
8 proof of claim, but that were filed in the bankruptcy court,  
9 that show an intention to make a demand for money from the  
10 debtors' estate. See *In re G.L. Miller & Company Inc.* 45 F.2d.  
11 115 (2d Cir. 1930), as well as the statement of the four-factor  
12 test -- factor one of which is that the claim, the documents  
13 have been timely filed with the bankruptcy court and had become  
14 part of the judicial record -- in *In re Enron Corporation* 370  
15 B.R. 90 (Bankr. S.D.N.Y. 2007).

16 The rationale for this, again, is the collective  
17 nature of a bankruptcy case and the need to put more than just  
18 the debtor on notice of the existence of the claim. See also  
19 *In re M.J. Waterman & Associates Inc.* 227 F.3d. 604 (6th Cir.  
20 2000), and *In re Trans World Airlines Inc.* 182 B.R. 102 (D.  
21 Del. 1995), which was reversed in part and affirmed in part,  
22 reversed on other grounds, at 96 F.3d. 687 (3d Cir. 1996).  
23 Consequently, I don't believe that the complaint or the  
24 counterclaim asserted in the Massachusetts District Court  
25 action and the Michigan State Court action would constitute an

1 informal proof of claim.

2                   Lastly, the movant contends that notice was improper  
3 because it was delivered, albeit at the same address, to  
4 Plymouth Rubber Company, Inc. as opposed to Plymouth Rubber  
5 Company, LLC. The change in name resulted from the Chapter 11  
6 reorganization of Plymouth Rubber Company, Inc., which is the  
7 entity that had filed the proof of claim against the debtor's  
8 estate. The emerged, reorganized debtor changed its name to  
9 Plymouth Rubber Company, LLC as the successor to Plymouth  
10 Rubber Company, Inc., and that was the entity, again at the  
11 same address, with which the debtor contracted post-petition  
12 under the contract that is now the subject of the dispute in  
13 Michigan and Massachusetts.

14                   Plymouth contends that because the notice was sent to  
15 "Inc." as opposed to "LLC," albeit at the same address, that  
16 notice was constitutionally deficient. Under the facts before  
17 me, however, I do not accept that argument. As set forth in  
18 Mr. Collins' affidavit and in the motion itself, Mr. Collins  
19 was the sole employee of Plymouth Rubber after it had  
20 determined to wind down its affairs. He was retained by the  
21 managing - or manager for Plymouth Rubber, LLC as well as the  
22 manager for other investments owned by the fund that owned the  
23 debtor, Versa Capital Management. And I believe that, as  
24 evidenced by the fact that Versa opened the notice and that  
25 Versa had hired Mr. Collins to look after LLC's affairs, and

1 that, therefore, he was acting as Versa's agent in this matter,  
2 there was sufficient actual notice as of July 9th for due  
3 process purposes.

4 The issue then comes down to whether the late filing  
5 of the proof of administrative claim should be permitted under  
6 Bankruptcy Rule 9006 for excusable neglect. A claims bar date  
7 is an important milestone in most Chapter 11 cases, and clearly  
8 here the administrative claims bar date was an important  
9 milestone in this case for the reasons that I've already  
10 stated. See First Fidelity Bank N.A. v. Hooker Investments  
11 Inc. (In re Hooker Investments Inc.), 937 F.2d. 833, 840 (2d  
12 Cir. 1991), in which the Court said, "A bar order does not  
13 function merely as a procedural gauntlet, but as an integral  
14 part of the reorganization process." See also In re Musicland  
15 Holding Corporation, 356 B.R. 603, 607 (Bankr. S.D.N.Y. 2006).

16 In most cases, the filing of a bar date order and the  
17 existence of a bar date enables the debtor and other  
18 constituents to determine whether the projected payments under  
19 a plan will actually satisfy the parties' expectations; and, in  
20 particular, an administrative claims bar date enables the  
21 parties to determine whether the plan they're proposing is  
22 feasible, in that administrative claims need to be paid in full  
23 for a plan to be confirmed and consummated.

24 Nevertheless, the bankruptcy court may enlarge the  
25 time for filing proofs of claim where the failure to act was

1 the result of excusable neglect, under Bankruptcy Rule  
2 9006(b)(1). The U.S. Supreme Court has adopted a two-part  
3 framework for the movant to establish its excusable neglect  
4 under Rule 9006(b)(1). The movant has the burden in this  
5 regard. See *Midland Cogeneration Venture Limited Partnership*  
6 v. *Enron Corporation* 419 F.3d. 115, 121 (2d Cir. 2005).

7 That framework was set forth in *Pioneer Investment*  
8 *Services Company v. Brunswick Associates Limited Partnership*,  
9 507 U.S. 380 (1993). First a failure to file the proof of  
10 claim must have been caused by neglect, which the Court defined  
11 as inadvertence, mistake or carelessness, including intervening  
12 circumstances beyond the party's control. *Id.* at 388. A  
13 tactical, or simply a knowing, decision not to file a timely  
14 claim will not suffice.

15 Second, the movant's neglect must have been excusable,  
16 which is to be determined in the exercise of the Court's  
17 equitable discretion taking into account all relevant  
18 circumstances surrounding the failure to file a timely claim,  
19 *id.* at 395, guided, however, by the following four factors:  
20 "the danger of prejudice to the debtor; the length of the delay  
21 and its potential impact on judicial proceedings; the reason  
22 for the delay, including whether it was within the reasonable  
23 control of the movant; and whether the movant acted in good  
24 faith." *Id.*

25 The Second Circuit has taken a "hard line" when

1 applying the Pioneer factors to motions under Rule 9006(b)(1)  
2 and other federal rules premised on excusable neglect. Again,  
3 see *In re Enron Corporation* 419 F.3d at 122. Although all four  
4 Pioneer factors should be considered, the Second Circuit places  
5 the greatest weight on the reason for the delay and whether it  
6 was in the movant's reasonable control. *In re Musicland*  
7 Holdings Corp.

356 B.R. at 607.

8 In the normal case, the movant has acted in good  
9 faith, for example, and that's the case here. Thus, the Second  
10 Circuit said, "In the typical case, three of the Pioneer  
11 factors, the length of the delay, the danger of prejudice and  
12 the movant's good faith, usually weigh in favor of the party  
13 seeking the extension. We and other circuits have focused on  
14 the third factor, the reason for the delay, including whether  
15 it was within the reasonable control of the movant. The  
16 equities will rarely, if ever, favor a party who fails to  
17 follow the clear dictates of a Court rule. Where the rule is  
18 entirely clear, we continue to expect that a party claiming  
19 excusable neglect will, in the ordinary course, lose under the  
20 Pioneer test." *In re Enron Corporation* 419 F.3d at 122-23; see  
21 also *Canfield v. Van Atta Buick/GMC Truck Inc.* 127 F.3d 248,  
22 250-51(2d Cir. 1997).

23 Factors other than the reason for the delay usually  
24 are relevant, therefore, only in close cases. *In re Musicland*  
25 Holdings Corporation

356 B.R. at 608. This is a somewhat close

1 case, in that I accept that Plymouth Rubber was clearly in  
2 wind-down mode, where it only had one employee, who, consistent  
3 with the very limited nature of its operations (which from  
4 Mr. Collins' affidavit, which is uncontroverted, pertained  
5 almost entirely to the two pending litigations) meant that  
6 Mr. Collins checked the post office box only roughly once every  
7 two weeks. In addition, the time for the bar date notice was  
8 shortened here from the normal time that would usually be  
9 provided. And, finally, there was potentially some room for  
10 confusion, given that the notice was addressed to "Inc." as  
11 opposed to "LLC."

12 On the other hand, I find it very hard to understand  
13 why, given Mr. Collins' sole function, which appears to be to  
14 monitor the mail, and the fact that he did so only roughly once  
15 every two weeks, he did not open the mail, but instead simply  
16 forwarded it to Mr. Schultz of Versa. It would not seem to me  
17 that he should have done that, given that Plymouth had  
18 established the P.O. box that he checked as opposed to setting  
19 up an automatic forwarding from Plymouth's address to Versa's.  
20 It would appear, instead, to me appropriate for Mr. Collins to  
21 have acted as someone who actually read the mail as opposed to  
22 as a second mailman for delivery purposes.

23 So, clearly, it was within Plymouth's control to have  
24 had notice of the bar date, at least by July 9th. Moreover,  
25 Plymouth did not file its claim until after the hearing on plan

1 modification, which it needn't have waited for. It had the  
2 claim or was aware of the late claim issue on July 16th, but,  
3 nevertheless, waited two weeks thereafter to do so. So, all  
4 things being considered, it appears to me that while this is a  
5 somewhat close case, the neglect here was largely within the  
6 control of Plymouth.

7                 Secondly, while the time between the bar date and the  
8 filing of the claim was relatively short, I conclude that there  
9 was prejudice to the debtor and other parties that resulted  
10 from the delay. If, in fact, the responsibility for paying  
11 this administrative claim, to the extent it is allowed, rested  
12 with either GM or the DIP lender acquisition vehicle, it would  
13 appear to me, particularly given the balance of factors on  
14 whether the delay was within Plymouth's control, that the lack  
15 of prejudice to the estate would have argued for letting the  
16 claim be filed late. (The fact that some party receives a  
17 smaller distribution or another third party pays more money as  
18 a result of a claim being allowed to be filed late is not  
19 sufficient prejudice, it is not the type of prejudice that the  
20 courts have in mind when they evaluate the prejudice factor  
21 under Pioneer.)

22                 However, here, I believe there is prejudice to the  
23 estate. And also, again, some blame should be laid on Plymouth  
24 for causing this prejudice by not filing the claim until after  
25 the plan modification hearing. As represented by Mr. Butler,

1 who clearly was involved in the preparation for the plan  
2 modification hearing and the debtors' efforts to determine  
3 whether, in fact, the MDA would result in a feasible plan, the  
4 calculation of likely administrative claims against a surviving  
5 debtor entity was a key factor in moving forward with the  
6 hearing on July 29th.

7 It's been stated that a demand number under the  
8 counterclaim by Plymouth is approximately twenty million  
9 dollars. That number would have had a significant impact on  
10 the debtors' presentation of the modification of the plan on  
11 July 29th and the Court's consideration of whether the plan is  
12 feasible or was feasible, and would have, if asserted as a  
13 recovery against the debtors -- the surviving debtors, as an  
14 administrative claim it could have had a very significant  
15 impact on feasibility. Consequently, it would appear to me  
16 that although the delay was short, it was very significant, and  
17 that both the debtors as well as the other parties to the MDA,  
18 and ultimately the Court, moved ahead in reliance on that claim  
19 not being asserted.

20 So, that prejudice, as well as my conclusion that the  
21 lateness of the claim, first in terms of its being verbally  
22 asserted only on July 16th and then actually formally asserted  
23 after the plan modification hearing, was largely, if not  
24 entirely, within the control of Plymouth, leads me to deny  
25 Plymouth's motion.

1                   Obviously, to the extent that it is asserting a right  
2 to setoff or recoupment, the lateness of the claim should not  
3 matter, so that what this ruling effectively does is preclude  
4 Plymouth from an affirmative recovery against the debtor's  
5 estate as opposed to, again, a recoupment or setoff right in  
6 the Michigan and Massachusetts litigation.

7                   So Mr. Butler, you can submit an order to that effect.

8                   MR. BUTLER: Yes, Your Honor.

9                   THE COURT: Okay.

10                  MR. BUTLER: Your Honor, the last matter on the agenda  
11 for today, matter number 8, is a motion for authority to apply  
12 the claims objection procedures to administrative expense  
13 claims, filed at docket number 18715. Your Honor, by this  
14 motion, what we're seeking to do is to use the claims  
15 procedures that Your Honor is familiar with, that have been  
16 running on a separate claims track for the last two and a half  
17 years, to apply those to administrative claims. And I think it  
18 goes without saying that the -- and I think Your Honor has  
19 observed in the past, that the procedures that have been  
20 adopted by the Court here back on December 7th of 2006 at  
21 docket number 6089, have served the debtors well and have dealt  
22 with an expeditious treatment of almost 17,000 proofs of claim,  
23 and through some 34 omnibus claims objections that addressed  
24 over 14,000 of those claims, and have resulted in the  
25 disallowance or withdrawal of over 10,000 of those claims. So

1 it's been an efficient process we've been able to use.

2 As we've indicated to Your Honor in the papers that we  
3 filed, there were 2,466 administrative claims filed as of July  
4 15, 2009, in the aggregate of approximately 1 billion dollars  
5 in liquidated amounts plus certain unliquidated amounts. And I  
6 think it's important to point out that our request here today  
7 to use the claims objections procedures here does not conflict  
8 with or override provisions in the modified plan with respect  
9 to administrative claims, but really provides a mechanism to  
10 implement them. This is a procedural motion only, and it is  
11 not intended to change the substantive terms of the plan as  
12 Your Honor approved it at the plan modification hearing.

13 Your Honor -- and we would also expect that these  
14 procedures, if Your Honor is prepared to apply them, would also  
15 apply to the second bar date. The administrative claims would  
16 be filed under the second bar date that is contained in Your  
17 Honor's plan modification order.

18 This is not contested. If fact, this process is  
19 supported by the principal stakeholders as we move forward.  
20 The only -- there were two objections filed. One of them we  
21 had resolved in advance with respect to Plymouth Rubber, which  
22 had indicated -- we'd indicated how we would deal with their  
23 claim if Your Honor had determined it was timely filed. That's  
24 no longer relevant in light of the ruling that we just  
25 received.

1                   THE COURT: Although, again, as far as setoff and  
2 counterclaims, I mean setoff and recoupment are concerned  
3 that -- I would assume that would just proceed in the  
4 mediation.

5                   MR. BUTLER: Right. It will be in the state -- that  
6 would be in the other actions.

7                   THE COURT: The debtors always have the flexibility to  
8 agree to something that's faster.

9                   MR. BUTLER: Correct.

10                  THE COURT: And it would seem to me, if you're in the  
11 middle of mediation --

12                  MR. BUTLER: Right.

13                  THE COURT: -- that that's faster than --

14                  MR. BUTLER: The mediation, Your Honor, I think had  
15 been largely completed without it being successfully resolved.  
16 But we had agreed that -- and certainly as to the recoupment  
17 and as to the setoff issues, those matters, we have agreed with  
18 them, would proceed in the existing form --

19                  THE COURT: Okay. All right.

20                  MR. BUTLER: -- as we move forward. With respect to  
21 Howard County, and I'll let counsel Mr. Powlen speak for  
22 himself on this issue, but they basically were concerned  
23 somehow that this administrative process might delay or impair  
24 their payment of their claim. Their claim has not been allowed  
25 yet, although it's anticipated that their -- and this was dealt

1 with at the plan modification hearing -- but it's anticipated  
2 that their claim will be resolved -- will be addressed in  
3 connection with the effective date of the plan, and ultimately  
4 payments made later in the calendar year.

5 This is a -- they have a -- Your Honor may recall, we  
6 had some discussion at the plan modification hearing about this  
7 being an element of an assumed liability by GM components.

8 THE COURT: And GM said they would -- they are  
9 assuming it, right?

10 MR. BUTLER: Right. And they said they are assuming  
11 it. And I believe that GM has provided some independent  
12 assurances to Howard County, not involving the debtors, as  
13 recently, perhaps, as yesterday, in terms of what their  
14 expectation or anticipation is.

15 THE COURT: Okay.

16 MR. BUTLER: What I simply -- what I sort of said to  
17 Howard County is that this form and this motion is not a time  
18 to give -- for the debtors to give assurances to any creditor  
19 about the substantive determination of the allowance or  
20 disallowance or treatment of their claim. And I wasn't  
21 prepared to do that on this record. But I anticipate that GM  
22 will -- if the matter is moved forward, if the effective date  
23 occurs as we anticipate it will occur towards the end of this  
24 calendar quarter, that GM has made their separate assurances to  
25 the Court that this is actually a claim that they are assuming

1 specifically, and they have given their independent assurances  
2 to Howard County about how they intend to pay that claim.

3 But for our purposes, I don't think that requires any  
4 relief on this record beyond those statements. And I'd ask  
5 Your Honor, subject to what Howard County wants to say, to  
6 approve the procedures as we're requesting.

7 THE COURT: Okay.

8 MR. POWLEN: Good morning, Your Honor.

9 THE COURT: Good morning. Sorry you had to sit  
10 through forty-five minutes of a ruling.

11 MR. POWLEN: It's no problem, Your Honor. It was  
12 actually educational. Hopefully, none of our clients will be  
13 in that situation.

14 David Powlen with Barnes & Thornburg on behalf of the  
15 Taxing Authority, Howard County, Indiana. And of course,  
16 again, these are the Kokomo facilities, Your Honor, that were  
17 referenced in the MDA and in testimony before the Court during  
18 the plan modification and confirmation proceedings.

19 Again, as is probably -- hopefully evident from our  
20 filing, Your Honor, we're not here to make trouble, generally,  
21 with respect to the debtors' proposed procedures. We're here  
22 to try to avoid our own trouble. Kokomo, Indiana, the county,  
23 has been faced with two bankruptcies, both Chrysler and the  
24 Delphi cases. So as you might imagine, the county authorities'  
25 antennae are up about the timing of payments as well as who is

1 going to make those payments. And as mentioned toward the end  
2 of our filing, the county had asked me to try to be as  
3 proactive as possible to obtain assurances as to the timing of  
4 a payment as well as who might pay it.

5 We wanted to make sure that our claim would not get  
6 hung up in the claim allowance procedures. We parsed through  
7 the debtors' July 31 motion -- I'm sure that Your Honor read  
8 our papers -- and we were concerned about the timely payment of  
9 our claim possibly being hung up in the claim -- the general  
10 claim allowance process, notwithstanding the fact that GM would  
11 be taking title to the property and it would -- has agreed to  
12 independently make the payment. And we just -- as a result of  
13 having made this our filing, we did have conversation with GM's  
14 counsel and an e-mail exchange of yesterday. They have  
15 confirmed that if the MDA transactions are closed and if the  
16 plan becomes effective, they will be -- they do intend to make  
17 the payment, even if it is not technically an allowed  
18 administrative claim, capital A capital C, under the plan.

19 THE COURT: Okay. So, it worked.

20 MR. POWLEN: I'm sorry?

21 THE COURT: So, it worked.

22 MR. POWLEN: Exactly, Your Honor. On that front,  
23 that's exactly right. And we were simply hoping to obtain the  
24 debtors' assurances that, again, our claim would not get hung  
25 up for six months.

1                   THE COURT: Well, I can't force them to do that. In  
2 fact, I'd probably preclude them from doing that. So that  
3 aspect of your relief I'm going to deny. I mean, if they have  
4 a legitimate -- if you submitted a tax bill that wasn't the  
5 expected tax bill but twice that, they would have to object to  
6 it.

7                   MR. POWLEN: I understand. And I guess that's another  
8 way to look at our filing, which is to ask the general  
9 question, to what extent will the debtors be involved in  
10 reviewing and objecting to these claims --

11                  THE COURT: Well, that's --

12                  MR. POWLEN: -- that GM is assuming?

13                  THE COURT: -- that was a question I had.

14                  MR. POWLEN: Yes.

15                  THE COURT: I had two questions in connection, and  
16 they're related, with this. The first one is, the plan and  
17 confirmation order and bar date order contemplate that the  
18 debtors will be paying ordinary-course -- admin claims in the  
19 ordinary course. And you've budgeted for that.

20                  MR. BUTLER: Right.

21                  THE COURT: I imagine there are probably a lot of  
22 these claims that may, out of an excess of caution, have been  
23 filed that you're probably going to pay in the ordinary course  
24 and not throw it into this process. That wasn't really  
25 something that was dealt with in the unsecured claim

1 procedures. But I'm assuming that the first level of analysis  
2 here is going to be someone on the claims team looking at this  
3 with -- the payables person at Delphi, and saying, well, let's  
4 weed all of these out, because these are just ordinary-course  
5 claims.

6 And I wouldn't assume there would even be an omnibus  
7 objection until -- maybe after they're paid you can do an  
8 omnibus objection. But it seemed like that would be an  
9 additional layer you'd have to do.

10 MR. BUTLER: Judge, I think when you look at the  
11 administrative claims process, and Mr. Powlen had talked about  
12 this, there is a statement in our motion, there is a statement  
13 in the plan that talks about the fact that we've not obligated  
14 to pay a claim until it becomes allowed. There's also a  
15 statement in the plan that says that the administrative claims  
16 will be paid in the ordinary course of business unless  
17 otherwise agreed to by the parties and so forth.

18 THE COURT: Right.

19 MR. BUTLER: And it doesn't refer to allowed  
20 administrative claim. But my anticipation is, both -- and the  
21 debtors will play a role as it relates to claims allowance on  
22 behalf of both of the two buyers.

23 THE COURT: Well, that's my next question.

24 MR. BUTLER: Right.

25 THE COURT: So let's deal with this one first. Are

1 you going to have someone who's looking at these and saying,  
2 besides -- maybe the easiest way to do it is just to do an  
3 omnibus objection when they're paid.

4 MR. BUTLER: Right.

5 THE COURT: To say, now there's no claim, that it's  
6 been paid.

7 MR. BUTLER: Right.

8 THE COURT: I'm assuming that's what you're going to  
9 do.

10 MR. BUTLER: I do not believe the debtors intend to  
11 use this claims process -- and I tried to say in the beginning  
12 by pointing out that we're not trying to override any of the  
13 provisions of the modified plan -- I don't think we're trying  
14 to use this process before Your Honor to suggest that there's  
15 180-day moratorium --

16 THE COURT: It's not in the --

17 MR. BUTLER: -- on the payment of ordinary-course  
18 claims.

19 THE COURT: Okay. All right.

20 MR. BUTLER: That's not what this is about.

21 THE COURT: Okay. So then, let's turn to the other  
22 point, which is, to the extent that under the MDA either GM  
23 acquisition or the DIP lender vehicle has picked up the claim,  
24 are you guys going to be doing anything with those claims?

25 MR. BUTLER: We're -- my understanding is that under

1 our arrangements with those parties, that we will be involved  
2 in the claims administration process.

3 THE COURT: Okay. And they're going to be funding  
4 that, then --

5 MR. BUTLER: Right.

6 THE COURT: -- because you're doing it for their  
7 benefit? Or have they already funded it?

8 MR. BUTLER: Well it's interesting. Part of that,  
9 Your Honor, the people who will actually be doing that will, I  
10 think, at the time, post-October 1st, will actually be employed  
11 by DIP Co. --

12 THE COURT: Right.

13 MR. BUTLER: -- or DIP Holding Co. or whatever the  
14 name of that --

15 THE COURT: Although, at some point --

16 MR. BUTLER: Yes.

17 THE COURT: -- the ones that don't resolve that way  
18 will be here?

19 MR. BUTLER: Right. But when I say that, Your Honor,  
20 just in terms of how this will operate as a technical matter,  
21 reorganized Delphi, which will be DBH Holdings Co., which will  
22 remain before Your Honor in terms of coming in to deal with  
23 these issues, will be handling under the MDA, claims objections  
24 and the administrative claims. And there are services  
25 agreements and support agreements on how one does that. So

1       ultimately, I think the reality of the circumstance will be,  
2       that the actual people working on this will be in a unit at  
3       Delphi which will be owned by DIP Hold Co. at the time. Now,  
4       how they choose to all allocate that in terms of cost among the  
5       parties --

6               THE COURT: Well, that's part of the service  
7       agreement, I guess.

8               MR. BUTLER: -- it's all being worked out between the  
9       parties.

10              THE COURT: And assuming the cost of -- to the extent  
11       that the informal discussions and the mediation doesn't work,  
12       you're here --

13              MR. BUTLER: Right.

14              THE COURT: -- that'll also be allocated --

15              MR. BUTLER: Yes.

16              THE COURT: -- under the service agreement?

17              MR. BUTLER: Yes, Your Honor. So DPH Holdings Company  
18       is not going to have to pay from its limited resources the  
19       costs associated of resolving a GM Acquisition company  
20       administrative liability. But it will be involved in it.

21              THE COURT: Do you think --

22              MR. BUTLER: As I understand it.

23              THE COURT: -- is there a reason to put any of that in  
24       the order or analyze that now that it's on the record? I don't  
25       think, given that they're parties to the agreement --

1 MR. BUTLER: Right.

2 THE COURT: -- and bound by the plan, that either GM  
3 Acquisitions or the DIP vehicle can say that this order somehow  
4 means that the reorganized debtor is assuming this cost. But  
5 I'm happy to put it in if you have any concerns about it.

6 MR. BUTLER: You know, Your Honor, probably the best  
7 thing to do so that there's no -- I mean, come post-October  
8 1st, there's going to -- history will move on, and some of the  
9 people that will be before Your Honor may change as well. So  
10 it may make sense for us to talk with counsel for Potoma (ph.),  
11 Wilkie, and counsel for people, and just put in an appropriate  
12 provision so there's no misunderstanding

13 THE COURT: No confusion about it.

14 MR. BUTLER: I think that's probably useful.

15 THE COURT: But I'm approving this on the assumption  
16 that it's -- to the extent you're carrying or the reorganized  
17 debtors would be carrying GM's or the DIP people's water, that  
18 they'll be paying for their share of that.

19 MR. BUTLER: I understand, Your Honor.

20 THE COURT: Okay.

21 MR. BUTLER: And I think that's the agreement, and it  
22 may make sense to make some reference to it.

23 THE COURT: Okay. All right. Does anyone else have  
24 anything to say on this motion on the procedures. All right.

25 Clearly this sort of staged approach has worked with

1 the unsecured claims, and I think it is probably the most  
2 efficient way to deal with admin claims too, so I'll approve it  
3 as well.

4 MR. BUTLER: Thank you, Your Honor. Your Honor,  
5 that's all we've got on today's agenda.

6 THE COURT: Okay. Thank you.

7 (Proceedings concluded at 12:10 PM)

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2 I N D E X

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15	approved		
16	Motion of Kara Zaleskas of Duane Morris LLP	14	12
17	to appear pro hac vice for Plymouth Rubber		
18	Company, LLC granted		
19	Motion of Plymouth Rubber Company, LLC for	52	20
20	order deeming administrative claim of		
21	Plymouth Rubber Company, LLC timely filed		
22	and related relief denied		
23	Motion for authority to apply claims	64	23
24	objection procedures to administrative		
25	expense claims approved		

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2 C E R T I F I C A T I O N

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4 I, Clara Rubin, certify that the foregoing transcript is a true  
5 and accurate record of the proceedings.

6

7

8 Clara Rubin

9 AAERT Certified Electronic Transcriber (CET\*\*D-491)

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11 Veritext LLC

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16 Date: August 21, 2009

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VERITEXT REPORTING COMPANY

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